

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 08TH DAY OF MAY 2020 / 18TH VAISAKHA, 1942

BA NO.2668 OF 2020

(CRIME NO.346/2020 OF THE KUNNAMKULAM POLICE STATION, THRISSUR DISTRICT)

PETITIONERS/ACCUSED NOS.1 & 2:-

1.SANTHOSH, S/O.SEKHARAN,
AGED 48 YEARS, KALARIKKAL HOUSE,
PUTHUSERY KURUNELLIPARAMBU,
CHEMMANTHITTA VILLAGE, THRISSUR DISTRICT

2.VIBINDAS, S/O.ANILKUMAR,
KALARIKKAL HOUSE, PUTHUSSERY,
CHEMMANTHITTA VILLAGE,
THRISSUR DISTRICT

BY ADV. RAKESH K

RESPONDENTS/STATE & COMPLAINANT:-

1. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-682 031.

2.THE STATION HOUSE OFFICER,
KUNNAMKULAM POLICE STATION,
THRISSUR DISTRICT, PIN - 680 503

BY P.P. SRI.AJITH MURALI & SANTHOSH PETER (SR)

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 08.05.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

B.A. No. 2668 of 2020

Dated this the 8th day of May, 2020

ORDER

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. The petitioners are accused Nos.1 & 2 in Crime No.346/2020 of Kunnamkulam Police Station registered alleging offences punishable under Section 55(g) of the Kerala Abkari Act, Section 188 of the IPC and Section 4 r/w Section 5 of the Kerala Epidemic Diseases Ordinance, 2020. The petitioners were arrested on 6.4.2020 and he is in custody.

3. The prosecution case is that, on 6.4.2020 at 1.30 pm, the accused were found in possession of 20 litres of wash.

4. The counsel for the petitioners submitted that, the petitioners are in custody from 6.4.2020 onwards and there are no criminal antecedents. He also submitted that, the

petitioners are ready to abide by any conditions, if this Court grants bail.

5. The learned Public Prosecutor submitted that, if this Court is granting bail to the petitioners, stringent conditions may be imposed.

6. After hearing both sides and after considering the fact that the petitioners are in custody from 6.4.2020, and also based on the submission made by the learned Public Prosecutor that the petitioners have no criminal antecedents, I think, this Bail Application can be allowed.

7. Moreover, considering the need to follow social distancing norms inside prisons so as to avert the spread of the novel Corona Virus Pandemic, the Hon'ble Supreme Court in **Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition(C) No.1 of 2020)** and a Full Bench of this Court in **Writ Petition(C) No.9400 of 2020** issued various salutary directions for minimizing the number of inmates inside prisons.

8. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in ***Chidambaram P. v. Directorate of Enforcement (2019 (16) SCALE 870)***, after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail remains the same inasmuch as, the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

9. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. The Superintendent of Jail concerned where the petitioners are incarcerated is directed to release the petitioners on bail on executing separate self bonds ensuring that they will appear before the Court concerned as and when required if they are not in detention

in any other case. It is further directed that the Superintendent of Jail should get the bail bonds from the petitioners as stipulated in Section 441 Cr.P.C.

2. The Superintendent of Jail concerned shall also get the phone numbers and the addresss at which the petitioners would be residing after their release.

3. The Superintendent of Jail concerned, immediately after release of the petitioners will forthwith forward the bail bonds obtained from the petitioners to the jurisdictional Court.

4. The petitioners immediately after release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish their phone numbers and the place where they are going to reside. The Station House Officer concerned

shall keep a vigil on the whereabouts of the petitioners and shall ensure that the petitioners do not violate the terms of the undertaking.

5. The petitioners shall appear before the Investigating Officer as and when required. The petitioners shall co-operate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

6. The petitioners shall within one week from the commencement of the functioning of the jurisdictional court, if the court is not functioning at present, execute separate bonds for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

7. The petitioners shall strictly abide by

the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing and other directions in the wake of declared lock-down.

8. If any of the above conditions are violated by the petitioners, the jurisdictional Court can cancel the bail in accordance with law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE

MMG